Privy Council Appeal No. 110 *of* 1932

Sri Raja Inuganti Venkatarama Rao - - - *Appellant*

v.

Sri Raja Sobhanadri Appa Rao Bahadur Garu and others - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH JANUARY, 1936

Present at the Hearing:

LORD MACMILLAN.

SIR JOHN WALLIS.

SIR GEORGE LOWNDES.

[*Delivered by* SIR GEORGE LOWNDES]

The issue between the parties to this appeal is as to the validity of a conveyance, made to the father of the first and second respondents, of a quarter share in the village of Somavaram, in the Kistna district, of which the appellant seeks to recover possession with mesne profits. The property in dispute had been the subject of a gift (the validity of which is not disputed) in July, 1900, by the late Maharaja of Venkatagiri, to the appellant who was then a minor. It was sold by the appellant's father, purporting to act as his guardian, to the father of the respondents on the 14th October, 1910, and upon a partition after his death came to the first respondent, who alone appears before the Board to contest the appellant's claim. It is common ground between the parties that if the conveyance was effective the appellant's suit must fail; for if it were necessary for him to ask that the conveyance should be set aside as not binding on him, his suit was out of time; if, on the other hand, it could be regarded as a nullity, there would be no bar of limitation to his recovering possession, and he would be entitled to his decree.

The conveyance in question was duly executed, the consideration of Rs.27,000 being paid to the appellant's father. The only attack upon it is as to the validity of its registration. The Somavaram property was situated in the Kistna district, but registration was effected at Samarlakota in the Godavari district, and if the matter rested there the registration would be clearly invalid, the conveyance would be unregistered and ineffective, and the respondents could not resist the appellant's claim.

The deed was undoubtedly prepared as a conveyance of the Somavaram property only, purporting to be sold by the father of the appellant as his natural guardian, and appears to have been executed and attested on the 14th October, 1910. It was not, however, presented for registration till the 14th February, 1911, and by that time an additional sheet had been inserted in the document purporting to include in the sale one yard of land in the village of Vundoor which was in the Godavari registration district. If the deed in truth " related " to a piece of land in Vundoor, the registration would, by the terms of section 28 of the Registration Act (XVI of 1908) be effective; if it did not, it would be ineffective, and no title to the Somavaram property passed under it. This is the question upon which their Lordships' judgment is sought.

The suit was tried by the Subordinate Judge of Bezwada. He accepted the contentions of the appellant and passed a decree in his favour dated the 20th September, 1924, assessing the mesne profits at Rs.1,000 per annum. On appeal the High Court took the opposite view. They held the registration to be valid, and that, therefore, the appellant could not recover possession of the property without setting aside the conveyance, and that this relief was time barred. The appellant's suit was accordingly dismissed by their decree of the 20th August, 1930.

The learned judges of the High Court also held that the mesne profits to which the appellant would be entitled if he had succeeded in his suit, would be at the rate of only Rs.600 a year instead of the Rs.1,000 allowed by the Subordinate Judge. Their finding upon this point has not been contested before the Board.

Before their Lordships it is asserted on the one side that the deed was a real conveyance of one yard of land in Vundoor (as the High Court held), and that although the motive of its inclusion was no doubt to allow of registration in a place convenient to the vendor, this did not affect the validity of the transaction. It is, on the other hand, contended for the appellant that the Vundoor land was a fictitious item which was never intended by either party to the transaction to pass under the deed and (translating this into the language of the Act) that the document did not in reality " relate " to any land in the Godavari registration area.

Similar questions have come before the Board in three cases subsequent to the date of the transaction now impugned, the most recent decision being in June, 1934, after the judgment of the High Court in the present case.

In the first, *Harendra Lal Roy Chowdhuri* v. *Hari Dasi Debi and others*, 41 I.A. 110, there had been included in a mortgage deed of certain mofussil properties a plot of land described as No. 25 Guru Das Street in Calcutta, where the deed was registered. This was found to be a non-existent

property and the registration was, therefore, held to be invalid. Lord Moulton in delivering the judgment of the Board said :—

> "Their Lordships hold that this parcel is in fact a fictitious entry, and represents no property that the mortgagor possessed or intended to mortgage, or that the mortgagee intended to form part of his security. Such an entry intentionally made use of by the parties for the purpose of obtaining registration in a district where no part of the property actually charged and intended to be charged in fact exists is a fraud on the registration law, and no registration obtained by means thereof is valid."

In *Biswanath Prashad and others* v. *Chandra Narayan Chowdhuri and others*, 48 I.A. 127, a mortgage deed had been registered in the Mozaffarpur district on the strength of the inclusion of a one-kauri share is the village of Kolhua situated in that district. It was not suggested in this case that the property was non-existent, but only that the mortgagor's title to it was imperfect. The appeal was heard by seven members of the Judicial Committee (including Lord Moulton) and the judgment was delivered by Viscount Finlay. He said :—

> " The view which their Lordships take of the facts is that which is compendiously stated by the High Court in the judgment of Coxe J. : ' I agree. The circumstances of the case leave no doubt that the parties never intended that the share of Kolhua should really be sold to Udit Narayan or mortgaged to Polai Lal. The so-called sale was a mere device to evade the Registration Act.' " . . .

The judgment then sets out the passage cited above from the judgment in *Harendra Lal Roy Chowdhuri's* case (*supra*), and the Board held that in the view taken of the facts by the High Court and by their Lordships the case fell within that decision.

In *Collector of Gorakhpur* v. *Ram Sundar Mal and others*, 61 I.A. 286, the question turned on the inclusion in a sale deed of a one-third share in a garden-room, which was the only property covered by the deed which was situated in the district where registration was effected. Here there was no doubt either as to the existence of the property or the vendor's title to it, but again a similar conclusion was reached. Lord Blanesburgh, by whom the judgment of the Board was delivered, referring to the inclusion of this item says :—

> " [Their Lordships] think that one of two inferences alone is possible : either that it was never intended by either party that the sitting-room should for any purpose other than that of registration be subject of sale at all, or that the vendor only included it because he knew that it never could become an effective subject of enjoyment or occupation by the purchasers. The word ' fictitious ' used in *Harendra Lal Roy* v. *Hari Dasi Debi* [L.R. 41 I.A. 120] is not confined to non-existing properties. It is satisfied if the deed does not ' relate ' to a specified property for any effective purpose of enjoyment or use."

Dealing with the question on these lines the Board held that the so-called sale was a mere device to evade the Registration Act and that the registration of the document was invalid.

Having regard to these pronouncements their Lordships can have no doubt that the criterion by which the question now before them must be decided is whether, upon the facts established by the evidence, the parties intended this one yard of land to pass under the deed. The motive may be immaterial as the respondent contends, if the requirements of the law have been complied with; but of this the intention is critical. They are satisfied that in the present case no such intention existed.

It is clear that the document as originally prepared, and, indeed, as executed by the vendor, contained no reference to any land in Vundoor. When it was brought in, no value was placed upon it, and no part of the consideration was assigned to it. The purchaser neither lived in Vundoor, nor did he own any property in Vundoor, and what possible use he could have had for a single yard of land in that village is unexplained. It is at least doubtful on the evidence whether this parcel, though forming part of a plot ostensibly purchased in the name of the vendor (the father of the present appellant) really belonged to him, or whether it was in fact identifiable. It is admitted that the purchaser never made any attempt to take possession of it in any shape or form : that when after his death his estate was partitioned between his sons, the first and second respondents, no account was taken of it, and no reference made to it, and the uncontradicted evidence is that it was shortly afterwards enclosed and built over by the owner of the immediately adjacent property, with whom the vendor was living, and for whom it is said that he was only a *benamidar*.

Their Lordships think that it is the inevitable conclusion from these facts that neither did the vendor intend to sell, nor did the purchaser intend to buy, this almost ridiculous fraction of land, and that in the words of Lord Blanesburgh in the case last cited, the so-called sale of it was a mere device to evade the Registration Act. The result, in their opinion, is that there was no effective registration of the conveyance upon which the respondent seeks to defeat the appellant's claim, and that it was, therefore, no obstacle to the appellant's suit for possession, which they think was rightly decreed in his favour by the Subordinate Judge.

There is one other matter to which their Lordships must refer. Mr. Dunne for the first respondent contended that if the conveyance was held to be ineffective, possession should only be given to the appellant upon the terms of his refunding the purchase money to the first respondent. If it had been established that the appellant had in fact received, or got the benefit of, the Rs.27,000 which the father of respondents one and two undoubtedly paid, there might have been some basis for this claim. But unfortunately for the first respondent there was no proof of this, and both Courts in India have found against him on the point.

For the above reasons their Lordships will humbly advise His Majesty that this appeal should be allowed, that the decree of the High Court dated the 20th August, 1930, should be set aside with costs, and the decree of the Subordinate Judge, dated the 20th September, 1924, restored, with the modification that the mesne profits should be calculated at the rate of Rs.600 per annum instead of Rs.1,000. The appellant must have his costs of the appeal.

(33285—3A) Wt. 8034—41 180 1/36 P. St. G. 338

In the Privy Council

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v.

SRI RAJA SOBHANADRI APPA RAO BAHADUR GARU AND OTHERS

DELIVERED BY SIR GEORGE LOWNDES

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